

Senate Engrossed House Bill

FILED

**JANICE K. BREWER
SECRETARY OF STATE**

State of Arizona
House of Representatives
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CHAPTER 129

HOUSE BILL 2136

AN ACT

AMENDING SECTIONS 34-201 AND 35-460, ARIZONA REVISED STATUTES; RELATING TO
BUILDING CONSTRUCTION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 34-201, Arizona Revised Statutes, is amended to
3 read:

4 34-201. Notice of intention to receive bids and enter contract;
5 procedure; doing work without advertising for bids;
6 county compliance

7 A. Except as provided in subsections B through G and L of this
8 section, every agent shall, upon acceptance and approval of the working
9 drawings and specifications, publish a notice to contractors of intention to
10 receive bids and contract for the proposed work ~~and stating~~. THIS NOTICE
11 SHALL BE PUBLISHED BY ADVERTISING IN A NEWSPAPER OF GENERAL CIRCULATION IN
12 THE COUNTY IN WHICH THE AGENT IS LOCATED FOR TWO CONSECUTIVE PUBLICATIONS IF
13 IT IS A WEEKLY NEWSPAPER OR FOR TWO PUBLICATIONS THAT ARE AT LEAST SIX BUT NO
14 MORE THAN TEN DAYS APART IF IT IS A DAILY NEWSPAPER. THE NOTICE SHALL STATE:

15 1. The nature of the work required, the type, purpose and location of
16 the proposed building, and where the plans, specifications and full
17 information as to the proposed work may be obtained.

18 2. That contractors desiring to submit proposals may obtain copies of
19 full or partial sets of plans and specifications for estimate on request or
20 by appointment. The return of such plans and specifications shall be
21 guaranteed by a deposit of a designated amount which shall be refunded on
22 return of the plans and specifications in good order.

23 3. That every proposal shall be accompanied by a certified check,
24 cashier's check or surety bond for ten per cent of the amount of the bid
25 included in the proposal as a guarantee that the contractor will enter into a
26 contract to perform the proposal in accordance with the plans and
27 specifications. Notwithstanding the provisions of any other statute, the
28 surety bond shall be executed solely by a surety company or companies holding
29 a certificate of authority to transact surety business in this state issued
30 by the director of the department of insurance pursuant to title 20, chapter
31 2, article 1. The surety bond shall not be executed by an individual surety
32 or sureties, even if the requirements of section 7-101 are satisfied. The
33 certified check, cashier's check or surety bond shall be returned to the
34 contractors whose proposals are not accepted, and to the successful
35 contractor upon the execution of a satisfactory bond and contract as provided
36 in this article. The conditions and provisions of the surety bid bond
37 regarding the surety's obligations shall follow the following form:

38 Now, therefore, if the obligee accepts the proposal of the
39 principal and the principal enters into a contract with the
40 obligee in accordance with the terms of the proposal and gives
41 the bonds and certificates of insurance as specified in the
42 standard specifications with good and sufficient surety for the
43 faithful performance of the contract and for the prompt payment
44 of labor and materials furnished in the prosecution of the
45 contract, or in the event of the failure of the principal to

1 enter into the contract and give the bonds and certificates of
2 insurance, if the principal pays to the obligee the difference
3 not to exceed the penalty of the bond between the amount
4 specified in the proposal and such larger amount for which the
5 obligee may in good faith contract with another party to perform
6 the work covered by the proposal then this obligation is void.
7 Otherwise it remains in full force and effect provided, however,
8 that this bond is executed pursuant to the provisions of section
9 34-201, Arizona Revised Statutes, and all liabilities on this
10 bond shall be determined in accordance with the provisions of
11 the section to the extent as if it were copied at length herein.

12 4. That the right is reserved to reject any or all proposals or to
13 withhold the award for any reason the agent determines.

14 B. If the agent believes that any construction, building addition or
15 alteration contemplated at a public institution can be advantageously done by
16 the inmates of the public institution and regularly employed help, the agent
17 may cause the work to be done without advertising for bids.

18 C. Any building, structure, addition or alteration may be constructed
19 either with or without the use of the agent's regularly employed personnel
20 without advertising for bids provided that the total cost of the work,
21 excluding materials and equipment previously acquired by bid, does not
22 exceed:

23 1. In fiscal year 1994-1995, fourteen thousand dollars.

24 2. In fiscal year 1995-1996 and each fiscal year thereafter, the
25 amount provided in paragraph 1 of this subsection adjusted by the annual
26 percentage change in the GDP price deflator as defined in section 41-563.

27 D. Notwithstanding the provisions of subsection C of this section, any
28 street, road, bridge, water or sewer work, other than a water or sewer
29 treatment plant or building, may be constructed either with or without the
30 use of the agent's regularly employed personnel without advertising for bids
31 provided that the total cost of the work does not exceed:

32 1. In fiscal year 1994-1995, one hundred fifty thousand dollars.

33 2. In fiscal year 1995-1996 and each fiscal year thereafter, the
34 amount provided in paragraph 1 of this subsection adjusted by the annual
35 percentage change in the GDP price deflator as defined in section 41-563.

36 E. For the purposes of subsection D of this section, the total cost of
37 water or sewer work does not include services provided by volunteers or
38 donations made for the water or sewer project.

39 F. Notwithstanding the provisions of this section, an agent may:

40 1. Construct, reconstruct, install or repair a natural gas or electric
41 utility and distribution system, owned or operated by such agent, with
42 regularly employed personnel of the agent without advertising for bids,
43 unless otherwise prohibited by charter or ordinance.

44 2. Construct recreational projects, including trails, playgrounds,
45 ballparks and other similar facilities and excluding buildings, structures,

1 building additions and alterations to buildings, structures and building
2 additions, with volunteer workers or workers provided by a nonprofit
3 organization without advertising for bids for labor and materials provided
4 that the total cost of the work does not exceed:

5 (a) In fiscal year 2001-2002, one hundred fifty thousand dollars.

6 (b) In fiscal year 2002-2003 and each fiscal year thereafter, the
7 amount provided in subdivision (a) of this paragraph adjusted by the annual
8 percentage change in the GDP price deflator as defined in section 41-563.

9 G. A contribution by an agent for the financing of public
10 infrastructure made pursuant to a development agreement is exempt from the
11 provisions of this section if such contribution for any single development
12 does not exceed:

13 1. In fiscal year 1994-1995, one hundred thousand dollars.

14 2. In fiscal year 1995-1996 and each fiscal year thereafter, the
15 amount provided in paragraph 1 of this subsection adjusted by the annual
16 percentage change in the GDP price deflator as defined in section 41-563.

17 H. In addition to other state or local requirements relating to the
18 publication of bids, each agent shall provide at least one set of all plans
19 and specifications to any construction news reporting service that files an
20 annual request with the agent. For the purposes of this subsection,
21 "construction news reporting service" means a service that researches,
22 gathers and disseminates news and reports either in print or electronically,
23 on at least a weekly basis for building projects, construction bids, the
24 purchasing of materials, supplies or services and other construction bidding
25 or planned activity to the allied construction industry. The allied
26 construction industry includes both general and specialty contractors,
27 builders, material and service suppliers, architects and engineers, owners,
28 developers and government agencies.

29 I. Any construction by a county under this section shall comply with
30 the uniform accounting system prescribed for counties by the auditor general
31 under section 41-1279.21. Any construction by a city or town under this
32 section shall comply with generally accepted accounting principles.

33 J. Any construction, building addition or alteration project which is
34 financed by monies of this state or its political subdivisions shall not use
35 endangered wood species unless an exemption is granted by the director of the
36 department of administration. The director shall only grant an exemption if
37 the use of endangered wood species is deemed necessary for historical
38 restoration or to repair existing facilities and the use of any substitute
39 material is not practical. Any lease-purchase agreement entered into by this
40 state or its political subdivisions for construction shall specify that no
41 endangered wood species may be used in the construction unless an exemption
42 is granted by the director. As used in this subsection, "endangered wood
43 species" includes those listed in appendix I of the convention on
44 international trade in endangered species of wild flora and fauna.

1 K. All bonds given by a contractor and surety pursuant to the
2 provisions of this article, regardless of their actual form, will be deemed
3 by law to be the form required and set forth in this article and no other.

4 L. Any building, structure, addition or alteration may be constructed
5 without complying with this article if the construction, including
6 construction of buildings or structures on public or private property, is
7 required as a condition of development of private property and is authorized
8 by section 9-463.01 or 11-806.01. For the purposes of this subsection,
9 building does not include police, fire, school, library, or other public
10 buildings.

11 M. Notwithstanding section 34-221, any agent may enter into a
12 guaranteed energy cost savings contract with a qualified provider, as those
13 terms are defined in section 15-213.01, for the purchase of energy cost
14 savings measures without complying with this article and may procure a
15 guaranteed energy cost savings contract through the competitive sealed
16 proposal process prescribed in title 41, chapter 23, article 3 or any similar
17 competitive proposal process adopted by the agent as long as the agent
18 follows any additional requirements set forth in section 15-213.01.

19 Sec. 2. Section 35-460, Arizona Revised Statutes, is amended to read:

20 35-460. Erection of buildings

21 ~~A. If bonds for the purpose of erecting and furnishing a public~~
22 ~~building are authorized at the election, the board of supervisors for a~~
23 ~~county and the governing body of a city, town or other municipal corporation~~
24 ~~shall AUTHORIZE THE DESIGN AND CONSTRUCTION OF THE BUILDING IN ACCORDANCE~~
25 ~~WITH TITLE 34. adopt plans and specifications for the building and as soon as~~
26 ~~practicable thereafter advertise for bids for erecting and furnishing the~~
27 ~~building, stating a day and hour, not less than fourteen days from the date~~
28 ~~of such notice, when bids will be received and opened.~~

29 ~~B. Notice of bids shall be published in a newspaper of general~~
30 ~~circulation within the county in which such board or governing body functions~~
31 ~~as follows:~~

32 ~~1. If in a weekly newspaper, once each week for two consecutive weeks.~~

33 ~~2. If in a daily newspaper, four consecutive times.~~

34 ~~C. The governing body or board shall award the contract for erecting~~
35 ~~and furnishing the building to the lowest and most responsible bidder, but~~
36 ~~any and all bids submitted may be rejected.~~

37 ~~D. If a bid is accepted, the governing body or board shall require the~~
38 ~~successful bidder to enter into a written contract for erecting, completing~~
39 ~~and furnishing the building and require from such bidder such bond or bonds~~
40 ~~as required under the provisions of title 34, chapter 2, article 2. The bond~~
41 ~~shall be approved by the governing body or board. If the contract is to be~~
42 ~~performed in phases pursuant to subsection G of this section, the bonds~~
43 ~~required by this subsection shall cover only the phase of the work in~~
44 ~~progress. When a contractor progresses to a new phase, bonds shall be~~
45 ~~required for that phase.~~

1 ~~E. A person shall not use, and the board of supervisors for a county~~
2 ~~or the governing body of a city, town or other municipal corporation shall~~
3 ~~not allow the use of, proprietary specifications, except as provided by~~
4 ~~section 34-104, subsection B.~~

5 ~~F. The governing body or board may agree to pay the contractor in~~
6 ~~monthly payments, as authorized by law or by mutual agreement, as they become~~
7 ~~due, and they shall be paid to the contractor upon a basis of ninety per cent~~
8 ~~of the value of the work performed and may include payment for materials and~~
9 ~~equipment on the site to be incorporated in the job as estimated by the~~
10 ~~architect or engineer up to and including the last day of each calendar~~
11 ~~month. Ten per cent of all estimates shall be retained as a guarantee of~~
12 ~~full performance of the contract, which shall be paid to the contractor~~
13 ~~within forty-five days after completion or filing of notice of completion of~~
14 ~~the contract. The contract shall be signed by the governing body or board~~
15 ~~and the contractor.~~

16 ~~G. The contract may provide for construction in phases. The contract~~
17 ~~may condition the contractor's progression into a phase on the sale of a~~
18 ~~series of bonds. If the contract is to be executed before initial delivery~~
19 ~~and payment of the bonds or a series of bonds, the advertisement shall~~
20 ~~specifically state such fact.~~

APPROVED BY THE GOVERNOR APRIL 17, 2006.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 17, 2006.